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BY HAND DELIVERY

City Council of the City of Boardman
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

Re: Hattenhauer Submittal for Appeal of Planning Commission's Decision on File
Number CUP24-000001

Dear Mayor Keefer and Council Members:

As you know, this office represents Hattenhauer Distributing Co. ("Appellant" or "Hattenhauer"), the owner of the Sinclair gas station located at 100 North Main Street, Boardman, Oregon 97818. Hattenhauer's mailing address is PO Box 1397, The Dalles, OR 97058. This letter is submitted in support of Hattenhauer's appeal application for the above-referenced file and the Planning Commission decision dated May 16, 2024 ("Decision"). The application submitted by the City of Boardman (the "Applicant") is referenced as File No. CUP24-000001 and involves rights-of-way for both Main Street and Boardman Avenue north of the Main Street Interchange ("subject property") and proposes a conditional use transportation improvement to install a High-Intensity Activated CrossWalk ("HAWK") signal with related street improvements, including a partially contemplated median along Main Street and other related Street Improvements (collectively, the "Project"). Please include this letter in the record for the above referenced file.

The Appellant generally agrees with the concept that a HAWK signal should be installed at the corner of North Main Street and the intersection of NW Boardman, but only after the Applicant submits a complete application in compliance with the law. The Appellant does not support inclusion of the median installation and right-in/right-out at North Main Street and North Front Street (the "Median") at this time because the full proposal has not been designed or coordinated in a manner to effectively address the 2009 Boardman Main Street Interchange Management Plan ("IAMP"), Capital Improvement Plan ("CIP"), or land use restrictions on the affected property. The application is not fully thought out, supported, or clear as to its proposal, extent, and impact. The decision of the Planning Commission should be overturned, or the matter continued for a full analysis of impacts and options. In all events the Median should be removed from the Project scope.

I. The City Council will exceed its authority approving a Project that is inconsistent with the Transportation System Plan and IAMP.

A. The Project is not currently justified under the IAMP

The reason that the IAMP contained certain triggers for right-in/right-out at N. Main and Front Streets is to fully take into account a traffic signal and improvements to ODOT facilities that would inform the appropriate time to install the Median. Hattenhauer retained Rick Nys, Principal Traffic Engineer of Greenlight Engineering to assess the IAMP and March 2024 Technical Memorandum prepared by Kittelson & Associates (the "Technical Memorandum"). Mr. Nys's analysis is included here as Attachment 1. His full analysis explains that to date the City has failed to address the IAMP adopted triggers for the modifications to the N. Main/Front Street intersection and that, in any event, it is clear that none of the triggers have been met to justify conversion of the intersection to right-in/right-out.

The IAMP triggers for conversion of the intersection of N. Main/Front Streets to right-in/right-out are:

- "Side street level of service drops below LOS E (15-20 years from now)
- Traffic signal installed at the I-84 westbound ramp (10-15 years from now)
- Increase in crashes
- Bridge improvement project constructed (15-20 years from now)
- Recurring public complaints about conflicts and safety at these locations."¹

Mr. Nys explains that none of these triggers are met:

- The Technical Memorandum does not support the Planning Commission's or staff's conclusion that the Applicant or City Council are compelled to undertake this Project based on level of service ("LOS"). In fact, the Technical Memorandum shows the LOS at the intersection of N. Main/Front Street is LOS C and the City's standard is met.
- No traffic signal is installed or currently proposed at the I-84 westbound ramp/N. Main Street intersection.
- As set forth in the Technical Memorandum, crash numbers are consistently low and do not constitute evidence that there is an increase in crashes at the intersection.
- No bridge improvement project has been constructed or is currently planned.
- The record contains no evidence that there are recurring public complaints about conflicts and safety at this location.

None of the triggers that were adopted and agreed upon as part of the IAMP to restrict turning movements at the intersection are met.² Taking this analysis together with the significant

¹ IAMP, p. 36.

² The Planning Commission attempts to make other findings regarding the operations at the N. Main Street/Front Street intersection to claim the current configuration causes slowing or stopping of vehicles, significantly degrades

public process in developing the IAMP, there is no justification to restrict access at this time at the N. Main Street/Front Street intersection.

Further, the application lacks evidence of existing operational issues at the N. Main Street/Boardman Avenue NE intersection and provides no engineering analysis of a HAWK signal or evidence that a HAWK signal will resolve operational issues. As Mr. Nys points out, the Applicant has not complied with the Manual on Uniform Traffic Control Devices ("MUTCD"), the national standard for installation of signals contemplated by this Project. Failure to analyze the Project under this standard is possible because the Applicant knows the standard would not be met. See Attachment 1. Until the MUTCD is applied and a traffic signal warrant analysis is done for the proposed HAWK and/or traffic signal, this application cannot be approved.

Additionally, the Technical Memorandum does not provide any substantial evidence or analysis of queuing at the N. Main Street/Boardman Avenue NE intersection. The analysis does not show that a HAWK signal will alleviate this unanalyzed, unquantified queuing. Further, the City staff acknowledged the problem before the Planning Commission at the May 15, 2024 meeting, explaining that the construction of the Median may cause stacking problems that could further exacerbate traffic problems for the City's transportation facilities and the interchange. The unexplored, but potential stacking problem can be avoided if full assessment is made of the impact of the Median, and appropriate amendments to the Transportation System Plan ("TSP"), and IAMP are made pursuant to OAR 660-012-0060, including its subsections (4) and (7). This process would include the public engagement described at OAR 660-012-0120, including equitable outreach as described under OAR 660-012-0125, -0130, and -0135. The proposal is really a disguised amendment to the IAMP without going through the correct land use process.

In point of fact, the City is just beginning its update of the TSP, as staff updated City Council at its July 2, 2024 meeting. Attachment 2, Item 14.E (stating TSP is in the beginning stage of development). Any consideration of changes to the intersection of N. Main and Front Streets should be considered as part of the TSP update, which will reflect current conditions and more realistic assumptions about potential future growth in the City. For example, the IAMP anticipated a city population of just over 5,000 by 2026. However, according to the Portland State University Population Study for 2023-2073, the population in 2020 was only 4,150, and it is not until 2040 that the population is anticipated to reach 5,246. Attachment 3, p. 2.³ Further, the 2009 IAMP assumed that a total of 340 residential units would be built between 2019-2029. However, the PSU Population Study shows that only 265 units were constructed between 2010-2020, far below the rate expected in the IAMP. Attachment 3, p. 3. This data shows that the 2009 IAMP forecasts that Kittelson assumedly based its Technical Memorandum on (as no updated projection of land uses is provided in the Technical Memorandum, p. 8) do not reflect reality, and any changes contemplated in this application should wait until the TSP is updated. This application should be denied.

the flow of traffic or reduces the efficiency of the transportation types, but there is no evidence to support those findings, and the IAMP does not list these factors as triggers for the Project. Attachment 1.

³ Excerpts of the PSU Population Forecast are provided in Attachment 3.

B. The construction of a Median at N. Main Street and Front Street is not included in the CIP.

Attached hereto is the City Council's approval of the CIP for 2024. Attachment 4. Project No. ST 7.0 only funds the signaling of the intersection at N. Main Street and Boardman Avenue:

"The project will consist of signaling the intersection of N. Main Street and Boardman Avenue. A center median on N. Main Street will also be constructed to improve traffic flow and pedestrian safety. The intersection will be reconfigured to accommodate the signal and center median." Attachment 4, p. 51.

The center median referenced is for that specific intersection – N. Main and Boardman, not the Median being contemplated to accomplish right-in/right-out at N. Main and Front Streets. The CIP makes no mention of funds available for a Median extending between N. Main Street and Front Street. Thus, approval of the Median exceeds the City's capital improvement authority.⁴

Consistent with the TSP, IAMP, and CIP, the traffic signal at N.E. Boardman, for which the CIP was adopted, should be installed and then the level of service at North Front Street should be revisited, prior to installing a Median to accomplish right-in/right-out access at the intersection with N. Main Street. Further, ODOT's work on the overpass should occur before the right-in/right-out decision is made. The scope of ODOT's needed improvements are set forth in the 2009 IAMP, and should occur prior to changing the traffic controls that will adversely impact the operations at Sinclair and other businesses on the west side of N. Main Street.

II. The Planning Commission's decision is in error because it does not correctly, completely or adequately address the conditional use criteria.

A. The Planning Commission's generic findings under BDC 4.4.400(D)(1) are not accurate or adequate.

The Planning Commission's decision errs in its adoption of staff's determinations regarding the HAWK signals consistency with the IAMP:

"Staff have determined that the HAWK signal is consistent with the MS IAMP as it does conform to the Access Management Plan by:

- Continuing to restrict access to the interchange and interchange ramps and is, in fact, working to eliminate impacts to the interchange ramps from traffic that currently back up when continual use of the RRFB causes delays of northbound travelers on Main Street.

⁴ The Technical Memorandum includes some effort to estimate cost impacts to the City with its proposed Alternative #1. However, no assessment of the cost to the City of obtaining an easement from Appellant, is discussed. With the inclusion of the median proposed at North Main and North Front Streets, Appellant would contest any attempt to obtain the easement required for this conditional use, increasing costs to the City.

- Improve safety factors not only within the interchange but also along Main Street and at this intersection in particular.
- Eliminating or reducing turning conflicts along the Main Street corridor at the Front Street intersection.
- Assuring that all current accesses are maintained to allow some level of ingress or egress and improving several accesses with improvements that also support pedestrian utilization."

Mr. Nys's analysis describes that staff's determinations about queuing issues are not analyzed or addressed in the Technical Memorandum. As a result the HAWK signal's impact cannot be considered, and nothing in the Technical Memorandum establishes the HAWK signal would mitigate such queuing problem. Attachment 1. Further, there is no evidence that the HAWK signal at N. Main and Boardman Avenue NE would improve safety at the interchange because there is no evidence that the HAWK signal would resolve such safety issue or that the N. Main/N. Front Street intersection is causing such safety issue at the interchange. Attachment 1. Moreover, there is no evidence that the HAWK signal eliminates or reduces turning conflicts along the Main Street corridor because there is no traffic analysis of the HAWK signal. Attachment 1. Finally, even the support for the HAWK signal installation is inadequate as there is no evidence about the operations at the N. Main/Boardman Avenue NE intersection during the arrival, lunch, and departure at the nearby school or that such operations at those times create a queuing problem; or that general pedestrian volumes are continuing to increase at that intersection. Attachment 1.

Further, as described above, the record does not support that the Project preserves or improves the safety and function of N. Main Street at the Front Street intersection since staff has stated that stacking problems may result. Additionally, the design of the Median is not fully disclosed so safety and function cannot be fully assessed, as discussed below.

Thus, based on the foregoing discussion, Attachment 1, and other information provided in this letter, the City cannot make findings that BDC 4.4.400(D)(1)(a), (b), (d)(or (e).

- B. The failure of an adequate site plan means this application is premature and prevents Appellant from providing full comment on the conditional use approval criteria.

As applicable to general conditional use criteria at BDC 4.4.400(B) and to the specific requirements under BDC 4.4.400(D), discussed in more detail below, one of the conditional use permit application requirements is a site plan submittal, which should include all of the proposed development including the dimensions of any structures and pedestrian circulation patterns, like the Median. See BDC 4.4.300 and 4.2.500(B)(2). The site plans submitted to date are not accurate or binding according to the City staff's testimony before the Planning Commission because the design of the N. Main and Front Street Median is not included in its final form. As a result, Appellant has no design for which to base its comments and protect its interests. However, based on what has been submitted, the design of the Median will interfere with access to the Sinclair property and have a high likelihood of interference with existing traffic patterns. The decision on this Project should be reversed and denied unless the Median is removed, or the design is refined

on the public record to not interfere with access to the Sinclair property. No approval findings under BDC 4.2.600 are included in the decision as required under BDC 4.4.400(B). All of these problems must be rectified before the City can make a decision on the application. Once more, this application is premature.

Other deficiencies result from a failure to provide an adequate site plan for the Project. The IAMP lists Boardman as a minor collector. 2009 IAMP, p. 12. Under the BDC Table 3.4.100, the Boardman right-of-way must be at least 68 feet in width and have a roadway at least 47 feet. Using the scale on the application materials from the April 17, 2024 Planning Commission packet, Figure 1 (also attached to the Notice of Decision), it appears that Boardman is being designed with about a 60 foot width right-of-way, and less than 47 feet of roadway. There does not seem to be adequate room as presented in the schematic layout to accommodate the required roadway width. Further, maintenance of the north side of Boardman Avenue is not addressed in the decision. However, under BDC 3.4.100(J), maintenance of sidewalks, curbs, and planter strips is the continuing obligation of the adjacent property owner. No portion of the decision addresses maintenance of these same sidewalks, curbs, and planter strips by any of the adjacent owners of property along NE Boardman Avenue.

Further, even if the public parking near the school were viable (see below discussion questioning the ability of the City to accept a dedication of such property) the design is not disclosed in the record and no ADA-accessible parking spaces are designated or depicted with a showing that adequate space is available, or that the parking spaces or stormwater infrastructure is designed to meet Code. BDC 3.3.300(D) and (E).

C. No findings are provided for the general conditional use permit approval criteria.

As stated under BDC 4.4.400(D)(1), the Project may be allowed "[s]ubject to a Conditional Use Permit *and* satisfaction of all of the following criteria..." Thereafter the provision lists criteria in BDC 4.4.400(D)(1)(a-e). However, the first requirement making the Project subject to a Conditional Use Permit means that the general conditional use criteria under BDC 4.4.400(A) also apply. The City must make findings under BDC 4.4.400(A)(1) that the size, dimensions, location, and access are adequate for the proposed use, considering the traffic impacts. As stated in Hattenhauer's appeal letter, the size of the contemplated Median at N. Main and Front Streets is not defined. However, the City staff described that the construction of the Median could lead to more stacking problems along N. Main Street as cars and vehicles line up to turn left. Thus, the required findings have not been made and cannot be made on this record and the application should be denied.

Under BDC 4.4.400(A)(2), the City needs to find that the negative impacts of the proposed use on adjacent properties and the public can be mitigated through application of other Code standards, or other reasonable conditions of approval. Here, the negative impacts to Appellant's property cannot be mitigated because reducing access to its site by construction of a Median at N. Main Street and Front Street will necessarily impede access to the Sinclair gas station from Front Street for vehicles that are exiting I-84. Also, the design of the Median and the Applicant's decision to extend the Median north on Main Street will adversely impact access to the Sinclair gas station off N. Main Street. Moreover, the City staff acknowledged during the Planning Commission hearing

that the decision to make N. Main/Front Streets right-in/right-out with the contemplated Median may lead to stacking problems for the left turn on Main Street into Sinclair, further exacerbating traffic problems instead of solving them. This last point, also raises concerns that the public facilities (i.e. N. Main Street) has adequate capacity to serve the proposal. Such a stacking problem means that the application cannot meet BDC 4.4.400(A)(1) and (3) and should be denied.

D. The Planning Commission's decision does not comply with the specific conditional use criteria for Transportation System Facilities and Improvements and other Code requirements.

Under BDC 4.4.400(D)(1)(b), the Project can only be approved if "the project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for abutting properties." Such a consistency finding is required for existing uses. As stated throughout this letter, the Project design is not compatible with Appellant's use of the Sinclair Property and the full design and analysis of the Project has not occurred.

In addition, the record is devoid of findings for two existing uses. First, the proposal is too premature because the Applicant has no authority over the school property. Even if the Morrow County School District is open to dedicating a portion of its property as stated in its July 1, 2024, letter, the Code only allows the City to accept dedications that are consistent with the TSP. BDC 3.4.100(A) and (C). As described above and in Attachment 1, the entire improvement is not in compliance with the TSP. Yet, the application proposes to convert a portion of the school property to public parking. In addition, under BDC 3.3.300(A)(4), schools are only allowed to provide parking at the rate of 1.5 spaces per classroom. So if the dedication cannot be accepted, then there is no authorization for public parking as a school use, or auxiliary parking for C & D Drive-In ("C & D") are permitted in the zone. Further, the school is not an applicant.

Second, the record contains no analysis that removal of parking from the C & D will be consistent with current parking requirements for that use under BDC 2.2.170 and BDC 3.3.300. The staff report to the City Council states that no consistency finding is required relative to the current parking requirements for C & D. As far as Appellant can discern, the claim is that C & D is nonconforming under BDC Ch. 5.2, and so consistency is not required. However, the history of the development of C & D is not at issue, rather, the Project cannot make C & D more nonconforming by removing necessary parking. Thus, findings regarding consistency with the current Code requirements for parking are necessary.

Under BDC 2.2.170(3)(a), all parking areas for the C & D are supposed to be provided so that they must be accessed from alleys or common driveways, placed underground, placed in structures above the ground floor, or in parking areas located behind or to the side of a building. The Code does not contemplate offsite parking that is being proposed as part of the Project (to be located on public school property). Further, under BDC 3.3.300(A)(2), the C & D's minimum parking requirements are one space per four seats or one space per 100-sq. ft. of gross leasable floor area, whichever is less. Nothing in the record quantifies the number of parking spaces that C & D is required to have under the Code and whether the parking requirements will be met onsite

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after the Project is built. In order to not make the use more nonconforming under either BDC 5.2.200(A). The Planning Commission's decision cannot be sustained on this record.

III. Review of the application should be sent back to the Planning Commission to ensure a fair public review process.

If the City Council is not willing to deny the Project based on the foregoing, the review of the application should start again at the Planning Commission level. The Planning Commission decision is tainted because two Planning Commissioners did not disclose their conflicts of interest or recuse themselves. ORS 244.120. With respect to C & D and the Planning Commission decision, the parking accommodation proposed at the school as replacement C & D parking is tainted because Planning Commissioner Jennifer Leighton voted and participated in deliberations when she stands to financially benefit from this aspect of the Project. Ms. Leighton did not disclose her conflict of interest or recuse herself. Further, Planning Commissioner Mike Connell also had an undisclosed conflict of interest. His apparent spouse and/or relative Toni Connell is the Utility Clerk for the City of Boardman. The City is the Applicant for the Project. Mr. Connell should have announced his conflict and recused himself from further involvement in the review of the application. As a result of this taint, the City Council should not hear this appeal, but instead start the process over again before the Planning Commission without the participation of the conflicted members. Hattenhauer and the public deserve review of this application through a fair and untainted process.

CONCLUSION

Appellant requests the application be sent back to the Planning Commission or denied for failure to comply with local and state law. Thank you for your attention to this matter.

Sincerely,



Jennifer M. Bragar

Enclosures

cc: (by e-mail)
client